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Richard D. Alaniz, JD • Dec. 21, 2021



It should come as no surprise that self-declared “union man,” President Biden, put enforcement of workplace regulations near the top of his administration’s priorities, surpassed in importance, perhaps, only by his commitment to resurrect unions as a force in the workplace. The administration says that aggressively enforcing workplace laws is the primary manner it can demonstrate it is protecting workers’ interests.

In his first week in office President Biden directed the Occupational Safety and

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Workforce Development Julie Su. In that role she was known for her aggressive enforcement of the California Labor Code. Biden also appointed David Weil as head of DOL's Wage and Hour Division, who played a major policy-making role in the Obama DOL. He was the primary impetus behind the high profile but ultimately unsuccessful attempt to double the overtime exemption salary threshold.

In support of his pro-union agenda, President Biden made several critical appointments to the NLRB. It is the not-well-known but powerful federal agency that regulates relations between employers and unions. It also deals with a growing list of employee activities in non-union workplace known as "protected concerted activities." Biden appointed three former union attorneys to the five-member Board another long-term union attorney, Jennifer Abruzzo, as General Counsel. Abruzzo promptly announced her priority would be identifying pending and incoming cases whereby they could reverse what are considered management-friendly decisions by the Trump-appointed NLRB. She also stated her intention to expand remedies in unfair labor practice cases. Employers will be confronting a decidedly pro-union NLRB.

Despite these appointments, there has not yet been any widespread enforcement activity. One likely reason is that the majority of DOL workers are not scheduled to begin the gradual return to their offices in person until early January 2022. Once fully staffed, OSHA workplace inspections will likely rapidly ramp up. Those few inspections that have occurred during the pandemic have focused primarily on compliance with COVID-19 protective measures. Even if the COVID Emergency Temporary Standard is permanently blocked, as appears likely, preventive measures recommended by the CDC will continue to be a focus of audits. Now would be a good time to conduct a self-audit of your workplace to ensure that you are in compliance. The audit should carefully assess not only those traditional workplace safety concerns such as proper PPE usage, proper guarding on equipment, lock out/tag out

procedures, proper labeling and storage of hazardous materials, and similar day-to-

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\$35,568 that is currently in effect. The Biden administration will likely seek an increase in the threshold, perhaps even higher than the previously proposed \$47,500. Such an increase would entitle millions of additional workers to overtime pay. It seems likely the effort to raise the overtime threshold will begin in earnest prior to the mid-terms.

On the pro-union side, we can expect an active NLRB with union-friendly decisions and rulemaking, especially those relating to union elections. Restoring the “quickie election” rules eliminated by the Trump NLRB will likely be first on their list. Those rules provided for union elections as soon as 10 days after a union filed its election petition. We should also expect NLRB decisions that limit employer conduct in opposing unions. In addition, at the Congressional level, we are already seeing a concerted effort to pass the Protecting the Right to Organize Act (PRO Act).

It is organized labor's highest priority and Biden repeatedly touted its importance on the campaign trail. Among other changes, it would eliminate state right-to-work laws, permit union secondary boycotts, ban employee meetings where employers speak against unions, and impose, for the first time ever, \$50,000 fines for unfair labor practices. It would also permit civil suits against company officers that interfere in union elections. The House passed the PRO Act in 2020 but it has been stalled in the Senate. Attempts to include it in the reconciliation bill were rejected, but the provisions for fines for unfair labor practices are included.

It is an open question whether unions can increase their numbers even with the Administration's thumb on the scales. Nonetheless, employers should take preventive measures on the off chance that a union targets your workplace. Managerial and supervisory training on recognizing and lawfully responding to union organizing efforts is of utmost importance. Few managers or supervisors today are familiar with unions. Well-intentioned actions or comments by inexperienced

supervisors or managers that nonetheless violate the law could result in costly fines,

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Rick Hantz, J.D., of [Hantz Associates](#), has been at the forefront of labor and employment law for over forty years. He began his legal career as a trial attorney with the U.S. Department of Labor, served on the President's Cost of Living Council during the Nixon Administration and also held prominent posts within the National Labor Relations Board, first in Washington D.C. and later in Minneapolis where he coordinated the NLRB's enforcement actions in the five-state Midwestern region.

A Partner in private practice since 1985, his experience has only deepened Rick's enthusiasm for labor and employment law and his drive for continued excellence in the field. He is Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization. Rick contributes dozens of articles per year on labor and employment law to trade journals and conducts numerous seminars each month to client companies and trade associations across the country.

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